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No. 84-1398 (3)

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

CASPAR W. WEINBERGER,
Secretary of Defense, *et al.*,
Petitioners,

v.

TEMISTOCLES RAMIREZ DE ARELLANO, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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BRIEF FOR RESPONDENTS IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the court of appeals correctly held that respondents' complaint, which sought declaratory and injunctive relief against the alleged seizure and occupation of their property in Honduras by United States officials without lawful authority or due process, presented a justiciable controversy.

2. Whether the court of appeals correctly held that the applicability of the act-of-state doctrine to this case could not be determined until the facts concerning the actions of the United States officials and the Honduran Government were established through discovery and trial.

3. Whether the court of appeals correctly held that the determination of what form of equitable relief, if any, might be appropriate in this case could not be made until the facts were established through discovery and trial.

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BRIEF FOR RESPONDENTS IN OPPOSITION

STATEMENT

The facts recited in the petition for certiorari are largely petitioners' version of matters that are in dispute. This case has not yet been tried, and the facts have not yet been determined. The court of appeals has merely held that the complaint on its face presents a justiciable controversy, and has remanded the case for trial.

The action was brought by respondents Temistocles Ramirez de Arellano (Ramirez), a U.S. citizen, and several U.S. (Puerto Rican) and Honduran corporations wholly owned by him, to obtain declaratory and injunctive relief against the alleged seizure and destruction of their property in Honduras by United States Government offi-

cials in connection with the establishment and operation of a military training facility known as the Regional Military Training Center (RMTC). The property in question is a 14,000-acre cattle ranch that is part of an agricultural-industrial complex that Ramirez carved out of a jungle wilderness and spent a major part of his life developing and operating. Ramirez is the sole beneficial owner of this property, holding title through the various corporations that joined in this action.

The complaint [1] named as defendants the Secretary of Defense, Secretary of State, and Chief of Engineers of the United States Army Corps of Engineers. It alleged that these defendants "have caused and permitted United States regular and special military forces, the United States Army Corps of Engineers, State Department and United States Embassy personnel, and a United States Contractor, Litton Industries, Inc., to deprive plaintiffs of their right to enjoy and use their property, by seizing the property and causing thereon to be constructed a Regional Military Training Center, paid for by United States funds, for the purpose of training Salvadoran soldiers." (Complaint, ¶ 10.) It further alleged that these actions (1) were "beyond defendants' express or implied authority under the laws and treaties of the United States and the United States Constitution" (*id.* at ¶ 16) and (2) "deprived plaintiffs of the use and enjoyment of their property without prior notice and hearing" in violation of the Due Process Clause of the Fifth Amendment (*id.* at ¶ 19).[2]

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[1] The complaint is reproduced in Appendix A to this brief. Although petitioners have included in their Appendix a number of documents that are not part of the record in this case, they failed to include the complaint upon which both the district court and the court of appeals based their decisions.

[2] The complaint also raised a claim under the Alien Tort Claims Act, 28 U.S.C. § 1350, on behalf of the Honduran corporation plaintiffs, but that claim was not addressed by the court of appeals and is not discussed in the petition for certiorari.

The complaint was filed on July 13, 1983, along with motions for a temporary restraining order and a preliminary injunction, accompanied by supporting declarations. One week later, petitioners filed a motion to dismiss the complaint or, in the alternative, for summary judgment. The district court barred all discovery while these motions were pending. The motions were heard by the district court on July 26, 1983. On August 24, 1983, the court granted the motion to dismiss on the sole ground that the case presented a nonjusticiable political question. (Pet. App. 239a-247a.) The court did not "reach or decide the motion for summary judgment." (*Id.* at 238a n.1.)

This is the posture in which the case came to the court of appeals. While the case was pending before a panel of that court, the panel, *sua sponte*, requested the parties to file supplemental briefs on the applicability of the doctrines of act-of-state and *forum non conveniens*. These issues had not previously been raised by petitioners. In response to the panel's invitation, petitioners contended for the first time that the act-of-state doctrine was an additional ground for sustaining the dismissal of the complaint.

On December 22, 1983, the panel issued its decision. It unanimously held that the district court had erred in concluding that this case presents a nonjusticiable political question. The panel noted that "plaintiffs do not seek adjudication of the propriety of the American military presence in Honduras, but of a narrower issue: whether United States officials have, by their actions, unlawfully deprived them of the use of their land." (Pet. App. 172a.) However, a majority of the panel affirmed the dismissal on the ground that, even if respondents' rights had been violated, the court could not fashion any appropriate form of equitable relief in the circumstances of this case. Judge Wilkey dissented. Neither the panel majority nor the dissent suggested that the act-of-state doctrine was applicable.

Respondents then sought rehearing *en banc*, and the court granted the request and vacated the panel decision. After receiving further briefs and hearing oral argument, the *en banc* court reversed the judgment of the district court and remanded the case for trial.

Judge Wilkey wrote the majority opinion, supported by five other judges. The majority emphasized that the sole question to be decided was whether the complaint, on its face, stated a justiciable claim for relief:

> We proceed under the settled rule for assessing the propriety of dismissal under Rule 12(b) of the Federal Rules of Civil Procedure. Many potentially dispositive facts are intensely disputed by the parties, such as the role of the Honduran armed forces and the United States military in operating and Regional Military Training Center (RMTC), and the extent of land occupied and used for the military base. Because there has been neither fact-finding by the district court nor stipulation of undisputed facts by the parties, we must accept as true all of the material allegations in the plaintiffs' complaint. Dismissal for failure to state a claim for relief is proper only when 'it appears *beyond doubt* that the plaintiff can prove *no set of facts* in support of his claim which would entitle him to relief.' All factual doubts must be resolved and all inferences made in favor of the plaintiffs. Defendants' factual allegations, if in agreement with plaintiffs', only reinforce plaintiffs' case; if in disagreement, they must be ignored. Thus, at this stage of the proceedings, the only relevant factual allegations are the plaintiffs'.

(Pet. App. 4a.) (Emphasis in original; footnotes omitted.)

The court then proceeded to consider in detail each of petitioners' many defenses, concluding that none of them would warrant dismissal of the action before respondents had an opportunity to pursue discovery and present their evidence.

Four judges dissented in three separate opinions. Judge Scalia, in an opinion joined by Judges Bork and Starr (Pet. App. 111a-147a), argued (1) that the case should be dismissed for lack of jurisdiction because relief is available to respondents under the Tucker Act, 28 U.S.C. § 1491 (1982), (2) that the shareholder plaintiffs lack standing, and (3) that equitable principles bar injunctive or declaratory relief in this case. Judge Starr, in an opinion joined only by Judge Scalia (Pet. App. 148a-167a), argued that the act-of-state doctrine foreclosed this action. Judge Tamm alone filed an opinion (*id.* at 98a-110a) concluding that the controversy presented a nonjusticiable political question because it concerned the executive's exercise of a foreign policy judgment.

After the court of appeals' judgment was entered, petitioners filed a petition for further rehearing, based on recently enacted foreign aid appropriations legislation.[3] The court of appeals, without dissent, refused to accept the petition and directed that it not be filed.[4]

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[3] Title III of the Foreign Assistance and Related Programs Appropriations Act of 1985, Pub. L. No. 98-473, 98 Stat. 1893-1894 (reprinted in the Addendum to the Petition at 2a-3a). This legislation is discussed at pp. 9-10, *infra*.

[4] Petitioners criticize the court of appeals for refusing to accept their rehearing petition, implying that the court did not even consider their arguments based on the new legislation. The rehearing petition, however, essentially repeated arguments that petitioners had shortly before presented to the court in an application for a stay of the mandate. The court had denied the stay, thereby indicating that it did not find any merit in those arguments and that it did not wish to cause any further delay of the case. If the court had then denied the petition for rehearing rather than refusing to accept it for filing, it would unavoidably have granted petitioners an extension of time to file their petition for certiorari, something the court presumably did not want to do. Therefore, since it had already considered and rejected the arguments made in that petition, it decided to refuse to accept it.

ARGUMENT

This case does not warrant review by this Court at this early stage of the litigation. The petition for certiorari is based almost entirely on petitioners' version of disputed factual issues. This Court does not sit to determine such factual disputes. The Court should therefore adhere to its normal practice of denying review of interlocutory orders such as the court of appeals' decision here. Moreover, on the basis of the facts alleged in the complaint, the court of appeals' decision is clearly correct.

1. This Court has long adhered to the policy that it will not grant certiorari to review the nonfinal judgment of a lower court absent an exceptional justification. *Hamilton-Brown Shoe Co. v. Wolf Brothers & Co.*, 240 U.S. 251, 258 (1916); *Cobbledick v. United States*, 309 U.S. 323, 324-25 (1940); R. Stern & E. Gressman, *Supreme Court Practice* 300-02 (5th ed. 1978). Where the case has been remanded by the court of appeals, it is not ripe for review by certiorari. *Brotherhood of Locomotive Firemen v. Bangor & Aroostook Railroad*, 389 U.S. 327, 328 (1967). This policy should be followed in the case at bar. The court of appeals made clear—indeed, emphasized—that it was determining only that respondents' complaint stated a justiciable claim for relief. (Pet. App. 3a-4a.) In doing so, the court expressly followed the familiar precept that dismissal for failure to state a claim is proper only when "it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief" (*id.* at 4a); *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957); *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972); *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974).

Petitioners' challenge to the court's decision is based largely on petitioners' own version of the disputed facts. In particular, petitioners rely heavily on the declaration of James H. Michel, a State Department official, concerning the respective roles of the United States and the

Honduran Government in the planning, establishment, and operation of the RMTC. Petitioners also rely on certain decrees of the Congress and President of Honduras concerning the RMTC. Based on these evidentiary fragments, petitioners assert that the RMTC is an activity of the Honduran Government, to which the United States has merely furnished certain technical assistance. Respondents' allegation, however, is that the RMTC was planned, financed, constructed, and operated by officials of the United States. The declarations introduced by respondents supported this contention. (See Pet. App. 6a-10a for the court of appeals' summary of respondents' version of the facts.)

Neither the district court nor the court of appeals attempted to resolve these disputed factual issues, and it would clearly have been improper for them to do so. The motion to dismiss was argued before the district court within two weeks after the complaint was filed, and the court refused to allow any discovery pending its ruling. Although an alternative motion for summary judgment was also before the district court, it is well established that a court may not grant summary judgment for one party before the other party has had an adequate opportunity to pursue discovery. *E.g., Washington v. Cameron*, 411 F.2d 705, 710-11 (D.C. Cir. 1969); *National Life Insurance Co. v. Solomon*, 529 F.2d 59, 60-61 (2d Cir. 1975); *Parrish v. Board of Commissioners*, 533 F.2d 942, 946-48 (5th Cir. 1976). This principle is particularly applicable where, as here, pertinent facts are within the exclusive possession of the moving party. *Schaffer v. Kissinger*, 505 F.2d 389, 390-91 (D.C. Cir. 1974); *Schoenbaum v. Firstbrook*, 405 F.2d 215, 218 (2d Cir. 1968) (*en banc*), *cert. denied*, 395 U.S. 906 (1969). The court of appeals was thus plainly correct in ruling that the only issue at this stage of the case is whether the complaint states a claim, and in disregarding all declarations concerning disputed issues of fact.

Petitioners urge that interlocutory review is warranted because further proceedings in the district court, including discovery, "could seriously disrupt" ongoing diplomatic discussions with Honduras and "undermine the credibility" of U.S. commitments in Central America. (Pet. 29.) No basis is given for this conclusory assertion and none exists. As petitioners well know, respondents have never questioned the sovereignty of the Honduran Government. This lawsuit is wholly premised on actions taken *by the petitioners* in violation of their legal obligations as United States officials. If petitioners are fearful of being embarrassed by the disclosure of their unlawful actions, that is not embarrassment from which they can be shielded by invoking foreign policy or national security interests.

Petitioners do not explain how normal discovery, conducted under the supervision of the district court judge and subject to all legitimate privileges, could interfere with the conduct of diplomacy or foreign policy. Certainly if the facts surrounding the establishment and operation of the RMTC are as petitioners so emphatically assert, no harm could be caused by discovery, which could only produce evidence corroborating the petitioners' factual claims. In any event, the Federal Rules of Civil Procedure give the district judge plenary power to grant protective orders and otherwise to control and limit discovery. (See Pet. App. 21a-22a.) Even Judge Scalia, in the panel opinion that was later vacated, rejected petitioners' identical contention that discovery in this case would compromise "sensitive and confidential communications between the highest members of the Executive Branch and officials of a foreign power" (*id.* at 173a). He wrote:

> On the basis of a bare complaint, a motion to dismiss and related affidavits, we cannot say that resolution of this question will require discovery of such materials. The existence of the base is no secret, and we see no reason why communications that sustain

> the Department's defense of Honduran approval and control would necessarily be sensitive. . . .

(*Id.*)

2. The decision of the court of appeals is correct and entirely consistent with prior decisions of this Court. In view of the thorough and eloquent opinion of Judge Wilkey on behalf of the court, our treatment here of each of the issues will be brief.

(a) The court of appeals held that respondents' complaint stated a valid claim "for an unauthorized and unconstitutional deprivation of the use and enjoyment of their property." (Pet. App. 16a). Petitioners argue in response that all of their actions with respect to the RMTC were within their authority—pursuant to various statutes, treaties, and the Constitution itself—to provide military training assistance to other countries. Respondents, however, do not challenge petitioners' authority to provide military training or any other form of assistance to foreign governments. Rather, respondents challenge petitioners' right to seize, occupy, and destroy the property of a U.S. citizen. By no stretch of the imagination do the statutes providing for training of foreign personnel abroad,[5] assignment of noncombatant U.S. military personnel to friendly countries,[6] or the Treaty of Friendship with Honduras[7] grant such far-reaching authority.

The recently-enacted 1985 Appropriations Act, on which petitioners place heavy reliance, does not provide the missing authority. On the contrary, that legislation *prohibits* the use of appropriated funds for "the construc-

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[5] Section 541 of the Foreign Assistance Act of 1961, 22 U.S.C. § 2347 (Pet. Add. 1a-2a).

[6] Section 503 of the Foreign Assistance Act of 1961, 22 U.S. § 2331 (Pet. Add. 1a).

[7] Treaty of Friendship, Commerce and Consular Rights, Dec. 7, 1927, United States-Honduras, art. I, 45 Stat. 2618-2619.

tion or operation" of the RMTC unless certain specific conditions are met, and petitioners concede that those conditions have *not* been met. (Pet. 9-10.) It is certainly clear, therefore, that this legislation, which was only enacted in late 1984, cannot remotely be construed as retroactively authorizing U.S. officials to seize and use respondents' property for the RMTC. Nor does the fact that the legislation looks to the Honduran Government to pay compensation to respondents exonerate petitioners from liability. In enacting this legislation, Congress held no hearing and made no finding concerning the role of U.S. officials in the establishment of the RMTC on respondents' property. Congress merely accepted, for the limited purposes of this appropriations legislation, the position urged upon it by the Executive Branch that the Government of Honduras should pay compensation to respondents. The legislation in no way preempts this litigation or resolves the issue of petitioners' own liability. It is noteworthy that no member of the court of appeals, not even the dissenters, supported petitioners' effort to obtain rehearing on the basis of this legislation.

Petitioners' contention that the complaint in this case does not adequately plead the "statutory limitation" on their authority which their actions exceeded (Pet. App. 14) is frivolous. Respondents' claim in this case is not that petitioners exceeded a specific "statutory limitation" on their authority, but rather that they seized and occupied respondents' property without *any* statutory or constitutional authority. This Court has made it clear that such an unauthorized seizure of private property is remediable by an action in district court. *Youngstown Sheet & Tube v. Sawyer*, 343 U.S. 579 (1952).

The fact that the seizure occurred in a foreign country does not eliminate the need for legal authority or strip the U.S. citizen of his constitutional protections against unauthorized conduct by U.S. officials. *Reid v. Covert*, 354 U.S. 1, 5-6 (1957). As Mr. Chief Justice Taney,

writing for the Court, expressed the principle in *Mitchell v. Harmony*, 54 U.S. (13 How.) 115, 134 (1851):

> [A U.S. military officer's] distance from home, and the duties in which he is engaged, cannot enlarge his power over the property of a citizen, nor give to him, in that respect, any authority which he would not, under similar circumstances, possess at home.

(b) Petitioners also argue that they were free to commit any action in Honduras against Mr. Ramirez' property (or, presumably, his person) that was authorized by the Government of Honduras. Acceptance of this principle would destroy the constitutional rights of U.S. citizens abroad which this Court has expressly recognized. The Court has held that "no agreement with a foreign nation can confer power on . . . any . . . branch of Government which is free from the restraints of the Constitution." *Reid v. Covert*, 354 U.S. 1, 16 (1957). The lower federal courts have also consistently rejected contentions by U.S. officials that their statutory or constitutional powers may be broadened, to the prejudice of U.S. citizens, by reason of agreements or joint ventures with foreign authorities abroad. *Berlin Democratic Club v. Rumsfeld*, 410 F. Supp. 144, 154-55 (D.D.C. 1976); *Seery v. United States*, 127 F. Supp. 601, 606 (Ct. Cl. 1955); *Turney v. United States*, 115 F. Supp. 457, 463-64 (Ct. Cl. 1953); *cf. Byars v. United States*, 273 U.S. 28, 32-33 (1927).

(c) Petitioners seek to dispose in a footnote (Pet. 18 n.10) of respondents' entitlement to procedural due process with respect to petitioners' seizure of their land. Procedural safeguards are, however, an important element of respondents' case. By reason of petitioners' failure to provide either notice or hearing, Mr. Ramirez has been deprived of any opportunity to persuade petitioners to modify their plans and has repeatedly been confronted with sudden and unpredictable interference with his property and business. (See Pet. App. 16a-17a.)

(d) Petitioners continue to maintain that the political question doctrine is applicable to this case (Pet. 19-21), notwithstanding that this contention was accepted by only one of the ten court of appeals judges. Petitioners' argument ignores the fundamental distinction between a suit challenging the President's determination to furnish military assistance to Honduras, which this case is not, and a suit which merely seeks "adjudication of the narrow issue whether the United States defendants may run military exercises throughout the plaintiffs' private pastures when their land has not been lawfully expropriated" (Pet. App. 19a-20a). The court below properly characterized the latter as a "paradigmic issue for resolution by the Judiciary" (*id.*).

(e) Petitioners continue to insist that this case should have been dismissed on the basis of the act-of-state doctrine, notwithstanding that (1) petitioners did not even raise this issue in the district court, but only in the course of appellate proceedings in response to an inquiry by the court of appeals, (2) respondents' complaint is directed exclusively against officials of the United States Government, and seeks no relief whatever against the Honduran Government or any of its representatives, and (3) the facts concerning the respective roles of the United States and Honduras in the establishment and operation of the RMTC are sharply in dispute and have not yet been determined. We submit that the court of appeals was clearly correct in concluding that this issue could not be resolved at this early stage of this case. (Pet. App. 69a-93a.)[8]

The act-of-state doctrine has traditionally been invoked to prevent U.S. courts from adjudicating claims asserted against foreign governments or their agents.

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[8] Only two of the four dissenting judges of the court of appeals joined in an opinion supporting petitioners on this issue. (Pet. App. 148a-167a.)

See, *e.g.*, *Underhill v. Hernandez*, 168 U.S. 250 (1897); *Banco National de Cuba v. Sabbatino*, 376 U.S. 398, 416-39 (1964). Respondents contend that the doctrine has no applicability at all in a case such as this, where the claims being asserted are exclusively against officials of the U.S. Government. Perhaps this Court may some day have to decide that question, but when it does so it should have before it a factual record that at least establishes precisely what the actions of the U.S. officials have been, what "act" the foreign state has engaged in, and how that "act" impinges upon the respective rights of the parties.

Here, these matters are in dispute. Petitioners rely on two Honduran decrees or resolutions, one enacted by its Congress and the other by its President. As the court of appeals noted, however:

> The first resolution submitted by the defendants has nothing to do with expropriation of the plaintiffs' land, and the second is merely the first step in a process which may or may not lead to expropriation by the Honduran government. They were issued many months apart. They are totally unrelated.

(Pet. App. 72a.) Respondents are certainly entitled to an opportunity to gather and present evidence as to the meaning and effect of these resolutions under Honduran law before any determination is made as to their effect on this litigation.

Respondents have contended from the start that the RMTC was planned, financed, built, and operated by U.S. officials. This does not mean, as petitioners suggest, that respondents accuse the Government of Honduras of "mendacity," or that a district court would have to impugn Honduran sovereignty or independence in order to sustain respondents' claim. Respondents do not claim that Honduras had no role at all in the RMTC; since the RMTC was established within that nation's boundaries, a

degree of cooperation by the Honduran Government was required. This fact, however, does not relieve the U.S. officials involved of responsibility if their activity in this enterprise infringed on the constitutional rights of a U.S. citizen. See *Reid v. Covert*, 354 U.S. 1, 16 (1957); *Berlin Democratic Club v. Rumsfeld*, 410 F. Supp. 144, 149, 154-55 (D.D.C. 1976)); *Seery v. United States*, 127 F. Supp. 601, 606 (Ct. Cl. 1955); *Turney v. United States*, 115 F. Supp. 457, 463-64 (Ct. Cl. 1953).

We believe that the act-of-state doctrine does not apply in this case at all. That issue, however, was not decided by the court of appeals. The court merely held that the issue was not yet ripe for decision, and therefore could not justify dismissal of the complaint at this early stage of the case. That decision presents no issue worthy of review by this Court.

(f) Petitioners also renew their contention that, in the particular circumstances of this case, there is no relief that the district court could grant without abusing its equitable discretion. As the court of appeals correctly held, questions of relief can hardly be decided before the basic facts of the case have been determined through discovery and trial. Indeed, such a premature consideration of matters relating to relief would itself have been an abuse of the court of appeals' appellate jurisdiction. *Singleton v. Wulff*, 428 U.S. 106, 119-120 (1976). Moreover, as the court of appeals also stressed, the trial court's remedial powers in shaping equitable decrees are extremely broad, so that it would be quite unlikely that *no* form of equitable or declaratory relief could be fashioned in this case.[9]

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[9] Petitioners also urge that respondents should seek relief in Honduran courts rather than in the United States. However, Honduran courts are hardly a proper forum to adjudicate claims against U.S. officials. Moreover, the Honduran administration of justice is widely known to be deficient and corrupt. (See the article from a Honduran newspaper reproduced in Appendix B hereto.)

Finally, we note that recent press reports indicate that the United States may now be closing the RMTC because it has been unable to reach agreement with Honduras concerning training of Salvadoran troops in that country.[10] Although such a development may affect the nature of the relief that is necessary or appropriate in this case, such questions must be left for the district court.[11]

CONCLUSION

For the reasons stated, the petition for certiorari should be denied.

Respectfully submitted,

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April 5, 1985

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[10] See, *e.g.*, article headlined *U.S. to Shut Honduras Training Site*, Washington Post, March 16, 1985, at A24.

[11] The events that have occurred in the nearly two years since the complaint was filed in this case have caused respondents enormous injury. Respondents therefore intend to amend their complaint in the district court to include a claim for damages against petitioners. See *Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388 (1971).

APPENDIX A

[Caption Omitted]

VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs allege as follows:

1. This is an action for declaratory and injunctive relief against defendants' unauthorized and unconstitutional seizure and destruction of plaintiffs' property to construct and operate, with United States funds and personnel, a military facility in Honduras for training soldiers.

JURISDICTION

2. The Jurisdiction of this Court is based on 28 U.S.C. §§ 1331, 1350 and 1361. Declaratory Judgment is sought pursuant to 28 U.S.C. §§ 2201 and 2202.

VENUE

3. Venue in this judicial district is based on 28 U.S.C. § 1391(e).

PARTIES

4. Temistocles Ramirez de Arellano ("Mr. Ramirez"), is a United States citizen residing in Puerto Rico and Honduras. He is the beneficial owner, general manager, and chief executive officer of the property at issue in this case.

5. The six corporate plaintiffs, two Puerto Rican and four Honduran, are and at all material times have been owned and controlled by Mr. Ramirez. They form a chain of title through which Mr. Ramirez owns the property at issue. The relationship between Mr. Ramirez and the corporations is as follows:

(a) T. Ramirez & Company, Inc. is a Puerto Rican company wholly-owned by Mr. Ramirez. T. Ramirez &

Company and Mr. Ramirez together wholly-owned Empacadora del Norte, S.A., also a Puerto Rican company.

(b) Empacadora del Norte, S.A. owns the holding company of Inversiones Centroamericanas, S.A., a Honduran Corporation.

(c) Inversiones Centroamericanas, S.A. in turn owns the three other Honduran corporations: Empacadora del Norte Honduras, S.A. is the company through which Mr. Ramirez engages in the business of cattle raising, cattle breeding, meat packing. sea vessel repair, and the sale of sea vessel supplies, and through which he owns his shrimp-packing facilities. Empacadora de Castilla, S.A. de C.V. is the company through which Mr. Ramirez engages in the business of commercial fishing and shrimp-packing. Ganadera de Trujillo, S.A. is the company through which Mr. Ramirez owns his cattle ranch and employs his ranch workers.

6. Defendant Caspar W. Weinberger, is the duly appointed Secretary of Defense of the United States. This defendant is authorized to act, subject to the direction of the President, in all matters relating to the Department of Defense and the military forces of the United States.

7. Defendant George P. Shultz is the duly appointed Secretary of State of the United States. This defendant is authorized to act, subject to the direction of the President, in all matters respecting foreign affairs, and has responsibility for the conduct of the personnel serving in United States embassies abroad.

8. Defendant Lieutenant General Joseph K. Bratton is the duly appointed Chief Engineer of the United States Army Corps of Engineers.

BACKGROUND OF THE CLAIMS

9. Plaintiffs own and operate a large agricultural-industrial complex in the northern portion of Honduras, in the Department of Colon. The property consists of a

14,000-acre cattle ranch, a meat-packing operation, a shrimp-packing operation, and a fishing fleet. In particular, Mr. Ramirez developed the land on which these businesses are located from raw undeveloped jungle over a 20-year period. Under his supervision, the land was cleared, feed grass was planted, and a large number of improvements were constructed including fences, farm roads, cattle pens, cattle treatment facilities, warehouses and numerous other buildings, water ponds and reservoirs, and housing for approximately 500 families. The value of plaintiffs' total investment in the property has increased from approximately $700,000 in 1962 to more than $13,000,000 today.

10. On information and belief, the defendants have caused and permitted United States regular and special military forces, the United States Army Corps of Engineers, State Department and United States Embassy personnel, and a United States contractor, Litton Industries, Inc., to deprive plaintiffs of their right to enjoy and use their property, by seizing the property and causing thereon to be constructed a Regional Military Training Center, paid for by United States funds, for the purpose of training Salvadoran soldiers.

11. On information and belief, there has not been due process of law undertaken by either the United States or the Honduran Government to lawfully take plaintiffs' property. Defendants initially sought permission from plaintiffs to use some of plaintiffs' cattle ranch land. Plaintiffs gave conditional permission for the use of a small portion of the land, consisting of 1,500-2,000 acres, but no more. Despite plaintiffs' refusal to permit the use of more land, and in violation of the terms of the agreement, defendants have now caused and permitted the greater portion of plaintiffs' land to be taken by their agents, officers and employees. Among other unlawful acts, the defendants have caused, planned, authorized or performed the following:

(a) constructing on plaintiffs' land a military training camp including a 1,000-man tent camp, buildings, ammunition storage facility, and firing range;

(b) bulldozing plaintiffs' prime grazing land and fences;

(c) bringing onto plaintiffs' land more than 100 United States Army Special Forces soldiers and more than 1,000 other soldiers who are living and training on plaintiffs' land;

(d) storing and using on plaintiffs' land ultra-hazardous military weapons and ammunition;

(e) using or staking out for future use three of the four principal sections of plaintiffs' land for military purposes; and

(f) interrupting the flow of water to plaintiffs' meat-packing plant.

12. The effects of the foregoing activities are as follows:

(a) Plaintiffs are imminently threatened with the total destruction of their investment, including the permanent deprivation of the rights, powers, and privileges associated with their ownership interest in the aforementioned property. More than 7,400 acres, comprising more than 50 percent of plaintiffs' total acreage and more than 90 percent of plaintiffs' year around grazing land, have already been rendered unavailable to plaintiffs for use in their cattle ranching business, and further destruction of plaintiffs' property is about to occur;

(b) Plaintiffs' business activities on the property have been seriously disrupted as plaintiffs have had to divert officers and employees from regular duties or to suspend work in response to problems caused by defendants' activities, resulting in substantial continuing damage to plaintiffs' operations; and

(c) Plaintiffs' employees and their families have been intimidated and frightened by the military activity in and around the areas in which they live and work.

13. Plaintiffs' meat-packing operation will soon become unprofitable and is threatened with failure as a result of the diminished flow of full-weight cattle from plaintiffs' grazing land to its slaughterhouse if the agents, officers and employees of defendants do not withdraw from plaintiffs' land.

14. Defendants' agents, officers and employees have informed plaintiffs that it is only a matter of time before all of plaintiffs' land will be taken over for defendants' use. If that happens, plaintiffs' business will be forced to terminate operations and will thereby suffer total financial ruin.

COUNT I

Unconstitutional and Unauthorized Seizure, Destruction and Deprivation of Plaintiffs' Use and Enjoyment of Property

15. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 14 herein.

16. Said actions of defendants and their agents, officers, and employees, in planning, approving, funding, supervising the placement of, and operating the Regional Military Training Center on plaintiffs' land; seizing, using and partially destroying plaintiffs' property to construct and operate the training center without plaintiffs' consent; and depriving plaintiffs of the use and enjoyment of their property, are beyond defendants' express or implied authority under the laws and treaties of the United States and the United States Constitution.

17. By reason of defendants' continuing seizure and destruction of plaintiffs' property, and the imminent threat that defendants will permanently deprive plaintiffs of the ownership, use and enjoyment of that property, plaintiffs are suffering immediate and irreparable injury for which they have no adequate remedy at law.

COUNT II

Deprivation of Plaintiffs' Use and Enjoyment of Property Without Due Process of Law

18. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 17 herein.

19. Said actions by defendants and their agents, officers and employees, in planning, approving, paying for, constructing, supervising the placement of, and operating the Regional Military Training Center on plaintiffs' land, and by seizing, using, and partially destroying plaintiffs' land to construct and operate the training center without plaintiffs' consent, have deprived plaintiffs of the use and enjoyment of their property without prior notice and hearing, and have thereby deprived plaintiffs of their due process rights under the Fifth Amendment to the United States Constitution.

COUNT III

Seizure and Destruction of Alien (Honduran) Plaintiffs' Property in Violation of the Law of Nations

20. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 19 herein.

21. Said actions by defendants and their agents, officers and employees, in planning, approving, paying for, constructing, supervising the placement of, and operating the training center and by seizing, using, and partially destroying property in which the Honduran plaintiffs have an ownership interest, constitute a seizure of alien property in violation of the Law of Nations.

WHEREFORE, plaintiffs pray that the Court:

1. Declare that defendants' actions, including their continuing and threatened conduct, are beyond their ex-

press and implied authority under any law or treaty of the United States or the United States Constitution.

2. Declare that defendants may not lawfully deprive plaintiffs of their use and enjoyment of their property without due process of law.

3. Declare that defendants may not seize or destroy the Honduran plaintiffs' property in violation of the Law of Nations.

4. Temporarily restrain and preliminarily enjoin defendants, their agents, officers, and employees, and all other United States persons acting or attempting to act on their behalf or in concert with them who have actual notice hereof, by service or otherwise, pending entry of a final judgment in this action, and permanently enjoining defendants as part of the final judgment, from seizing, occupying, or destroying plaintiffs' property, or depriving plaintiffs of the use and enjoyment thereof.

5. Grant such other relief as the Court deems just and proper.

Respectfully submitted,

/s/ Mark R. Joelson
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July 13, 1983

APPENDIX B

ENGLISH TRANSLATION OF ARTICLE FROM *NACIONALES*, JULY 6, 1983

Marco Tulio Castillo:

IMPOSSIBLE TO COMBAT CORRUPTION IN THE COURTS

TEGUCIGALPA. For the Judge of the Supreme Court of Justice, Marco Tulio Castillo, "it is impossible to halt or to combat corruption in the judicial branch."

"It is an inheritance of the past that is difficult to eradicate of some public functionaries", the judge said.

"When we reach the Supreme Court, the goal that excited us was to end corruption. However, even at that lofty position we were not able to end that social evil within the judicial branch. We are nevertheless in the process of achieving this." "To be able to attain that objective, however, we have to face many barriers, many problems, because it is very difficult for us to become aware of all of the misdeeds that are committed by some of the judges of the republic", stated the member of the judicial branch. The Official said that the supreme judiciary organ will appeal to the good intentions and will request the valuable cooperation of journalists and the communications media to "help us in this task of making the judicial branch decent, because we believe that without this support and without the cooperation of the people, it will be difficult for us to achieve our goals."

It is regretful that many of the outrages committed by the judges do not become known by the Supreme Court

and thus it is extremely difficult to punish the responsible parties.

He concluded that the corruption in this branch of government cannot be attributed to the low salaries received by judges who are members of the bar, because their salaries at the preesnt time range from 2,200 to 2,500 lempiras per month.